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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,816	07/22/2003	Leon M. Silverstone	BIOSCI.001C1	6648

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EXAMINER
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SMITH, STEPHANIE R

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/624,816	SILVERSTONE, LEON M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephanie Smith	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 20, 21 and 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-19, 22-23, and 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11 April 2005 22 July 2003
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

1. Applicant's request for reconsideration of the advisory action of the last Office action is persuasive and, therefore, the advisory action is withdrawn.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on April 5, 2005 was filed after the mailing date of the application on July 22, 2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With reference to claims 4 and 5, "some of said series..." and "a portion of said series..." are vague. It is suggested to use "at least one of said series..."

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 7-8, 14, 17, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lathrop (U.S. 6083250) in view of Beder (U.S. 6041262). Lathrop teaches a method for treating viral infections by applying electrical stimulation to the skin (see column 2, lines 36-40) via two electrodes (see figure 1) supplying electrical pulses of different maximum amplitudes (see Abstract). With reference to claims 1, 7, 14, 17, and 29-30, Lathrop does not teach that the first and second electrodes are configured such that the second electrode defines a boundary that surrounds the first electrode. Beder teaches an array of concentric electrically conductive electrode rings (see column 3, lines 1-2 and figure 1B). Beder further teaches that such a configuration allows different voltages to be applied to different electrode rings (see column 3, lines 10-15). Because of the configuration of the electrodes, different current amplitudes, frequencies, or voltages can be applied to an enclosed area of skin, thereby providing more effective electrical stimulation. Regarding claims 2-3 and 8, Lathrop teaches that the alternating current is supplied with one of a square wave between one and 100 mA (see Abstract), and that the controller and pulse generator are configured to deliver current of 9, 18, or 27 mA alternating current (see column 4, lines 59-61 and column 5, lines 34-40). Therefore, it would have been obvious to one having ordinary skill in the art to combine the herpes

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treatment device taught by Lathrop with the electrodes taught by Beder in order to provide more effective stimulation.

5. Claims 4-6, 9-13, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lathrop in view of Beder as applied to claim 1 above, and further in view of Dhurjaty (U.S. 6597949). Lathrop in view of Beder teach the herpes treatment method described above, but do not teach alternating AC and DC pulses. Dhurjaty teaches a power factor controller for converting the alternating voltage to a direct voltage, and a device for converting the direct voltage into a biphasic waveform voltage (see Abstract). Producing both AC and DC pulses for therapy provides effective and efficient treatment. Regarding claims 10-12, Lathrop teaches the herpes treatment described above, and further teaches providing different frequencies (see Abstract and column 4, lines 59-63). With further reference to claims 6 and 13, Lathrop in view of Beder teach the herpes treatment described above, but do not teach a voltage of less than or equal to 20 volts. Dhurjaty teaches providing a voltage less than or equal to 20 volts (see column 4, lines 65-67). Providing a lower voltage prevents the patient from experiencing unnecessary pain. Therefore, it would have been obvious at the time the invention was disclosed to combine the herpes treatment method taught by Lathrop in view of Beder with the AC and DC pulses taught by Dhurjaty in order to provide effective and efficient treatment and to prevent the patient from experiencing unnecessary pain.

6. Referring to claims 18-19, Lathrop in view of Beder disclose the claimed invention but do not disclose expressly that the electrodes are configured as

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concentric rectangles or squares, respectively. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the herpes treatment as taught by Lathrop in view of Beder with the concentric rectangular or square electrodes, because the Applicant has not disclosed that the concentric rectangular or square electrodes provide an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the Applicant's invention to perform equally well with the concentric circular electrodes as taught by Lathrop in view of Beder, because it provides electrical stimulation therapy and since it appears to be an arbitrary design consideration which fails to patentably distinguish over Lathrop in view of Beder. Therefore, it would have been an obvious matter of design choice to modify Lathrop in view of Beder to obtain the invention as specified in claims 18 and 19.

7. Claims 22-23 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lathrop in view of Beder as applied to claims 1, 7, and 14 above, and further in view of Carter et al (U.S. 6554781). Lathrop in view of Beder teach the herpes treatment described above, but do not teach the counter or LDC display. Carter et al. teach a counter to count the number and timing of treatments and the LCD display (see figure 10; column 15, lines 25-28; and column 4, lines 56-60). Counting and displaying the number and timing of therapy allows the user to be aware of the amount of treatment given in order to avoid providing too much stimulation, which may damage the skin. Therefore, it would have been obvious to one of ordinary skill in the art at the time the

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invention was disclosed to combine the herpes treatment taught by Lathrop in view of Beder with the counter and display taught by Carter et al. in order to avoid too much stimulation that may cause damage to the skin.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-14, 17-19, 22-23, and 29-32 have been considered but are moot in view of the new ground(s) of rejection.

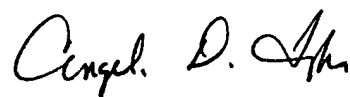
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie Smith whose telephone number is 571-272-2834. The examiner can normally be reached on Monday-Friday between 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SRS 5/1/06  
SRS



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